IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.5774 OF 2003 WRIT PETITION NO. 6320 OF 2003
AND
WPMP.NOs.7424,8091 & 8092 OF 2003

Erode District Bus Owners
Association,
Rep. by its Secretary,
Bus Mahal, 35, Annamalai Nagar,
Mettur Road, Erode 638 011. .. Petitioner in both WPs

-Vs-

1. The Transport Commissioner,
Ezhilagam, Chepauk,
Chennai 5.

2. Secretary,
Regional Transport Authority,
Gobichettipalayam,
Erode District.

3. Tamil Nadu State Transport
Corporation,
(Coimbatore Divn.II)Ltd.,
rep. by its Managing Director,
Chennimalai Road, Erode. .. Respondents in both WPs

4. The Secretary to the Government,
Transport (A) Department,
Secretariat, Fort St. George,
Chennai 600 009. .. Respondent No.1 in WP.No.
6320 of 2003

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Alagirisamy
Senior Counsel for
Mr.M. Palani

For Respondents : Mr.R. Thiagarajan
Senior Counsel

Assisted by
Mr. Sanjay Ramasamy
GovernmentAdvocate

:J U D G M E N T

The petitioner, which is an Association of the Bus Owners, has filed W.P.No.5774 of 2003 seeking to issue Writ of Mandamus forbearing the second respondent from approving any set of timings submitted by the third respondent, Tamil Nadu State Transport Corporation in respect of their vehicles for which the permit is issued under Section 103 of the Motor Vehicles Act based upon the approved scheme in respect of Revenue District of Erode. In the connected W.P.No.6320 of 2003, the prayer is to issue Writ of Certiorarified Mandamus to quash the letter dated 18.02.2003 issued by the first respondent, the State Government to the second respondent and to direct the third respondent, the Secretary, Regional Transport Authority, Erode District to implement the permits issued in favour of Tamil Nadu State Transport Corporation, the fourth respondent after conducting the timing conference in accordance with Rule 248 of the Tamil Nadu Motor Vehicles Rules.

2. The Government of Tamilnadu has formulated area schemes for every district including Erode. The existing operators have been permitted to operate on the approved scheme routes. As a result of such policy, the private operators operate in all the routes simultaneously with Tamil Nadu State Transport Corporation. It is the contention of the petitioner that before grant of any permit to Tamil Nadu State undertaking to operate their buses, the procedure contemplated in Rule 2 48 of the Tamil Nadu Motor Vehicles Rules (hereinafter referred to as the Rules) has to be followed. This rule is framed in exercise of power under Section 96 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act). The impugned clarification has been issued by the Government stating that while issuing permits to State undertaking it is permissible to fix timings in respect of Corporation vehicles without taking resort to Rule 248. The validity of such clarification is being challenged. It has been submitted that while considering the question of timings, the procedure contemplated under Rule 248 is to be followed and the sector private operators should be given opportunity of hearing.

3. The above submission made on behalf of the petitioner has been resisted by the respondents. It is contended on behalf of the respondents that in view of the provisions contained in Section 103 of the Act and in view of overriding provision contained in Section 98, Chapter VI of the Act has to be given precedence and therefore, there is no necessity to convene any timing conference as contemplated under Rule 248 while issuing permits to State undertaking vehicles.

4. Before considering the questions raised, it is necessary to notice the relevant provisions contained in the Motor Vehicles Act as well as the Tamil Nadu Motor Vehicles Rules. Section 98 contained in Chapter VI is as follows:-

98. Chapter to override Chapter V and other laws.- The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Section 103 reads as follows: 103. Issue of permits to State transport undertakings.- (1) Where, in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter V.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order, -

(a) refuse to entertain any application for the grant of renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to (i) render the permit ineffective beyond a specified date; (ii) reduce the number of vehicles authorised to be used under the permit. (iii)curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under subsection (1) or sub-section (2).

Rule 248 of the Tamil Nadu Motor Vehicles Rules,1989 reads as follows : 248. Stage carriage fixing Schedule of timing.- (1) The Transport Authority may, if no schedule of timings is already fixed or approved for a stage carriage or a service of a stage carriages on any route, either on its own motion or on an application made to it in writing, by a general or special order, fix and approve a schedule of timings for the particular stage carriage or the service of stage carriages in consultation with the applicant and the persons providing transport facilities on the route or sectors thereof and while approving a schedule of timings, on an application made to it in writing, it may approve the scheme with such modification as it deem necessary. It shall not be necessary for the Transport Authority to send individual notice of the timings conference to the operators concerned and it shall be sufficient compliance of this provision, if the notice giving the existing and proposed schedule of timings and the time, date and place at which the subject will be discussed, is affixed on the

notice board of the office of the Transport Authority and copies of the notice sent to the applicant and the concerned S.T.U. and bus owners Association of the district though which the route passes: Provided that in the case of stage carriages of State Transport Undertakings tentative timings may be fixed by the Transport Authority without following the procedure laid down in the sub-rule in the case of introduction of the Stage Carriages on temporary permit.

(2) Notwithstanding anything contained in sub-rule (1), the transport authority may, at any time either on its own motion or on an application made to it in writing, if satisfied of the expediency, revise or modify any schedule of timings already fixed or approved for any particular stage carriage or any service of stage carriages on any route or portion thereof, after following the procedure laid down in sub-rule (1).

(3) Every application made to the Transport authority for fixation or revision of schedule of timing shall be accompanied by a fee as specified in the Table under rule 279: Provided that when Transport Authority revise or modify any schedule of timing already fixed in respect of a stage carriage on its own motion consequent on fixation or revision of schedule of timings of some other services of stage carriages, the permit holder need not pay any fee for such revision or modification. (4) Nothing contained in sub-rules (1) sot (3) shall apply to a passenger-cum-goods carriage.

5. It is the contention of the learned counsel appearing for the petitioner that even if State Transport Undertaking is entitled to exclusive grant of permits under section 103, once the private operators are allowed to compete with the State Transport Undertaking, inspite of the provisions contained in Section 103, the procedure contemplated under Rule 248 regarding fixation of timing must be followed in respect of all the buses and the exception is contemplated only under proviso to Rule 248, while issuing temporary permits to State Transport Undertaking.

6. There cannot be any doubt that when a scheme is approved and finalised in accordance with Section 100 of the Act providing complete exclusion of other persons, only stage carriages belonging to State Transport Undertakings can ply on the road and in such an event, the question of convening timing conference as contemplated under Rule 248 would not arise. The question, however, is where there is no complete exclusion of other operators, whether the procedure contemplated under Rule 248 is required to be followed as in such case the question of finalising timings for various stage carriages would crop up.

7. Section 98 provides that the provisions of Chapter VI and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V. It is no doubt true that Rule 248 is framed pursuant to Section 96 for the purpose of carrying into effect the provisions of Chapter V. On the other hand Section 107 of the Act empowers the State Government to make Rules for the purpose of carrying

into effect the provisions of Chapter VI. A combined reading of all these provisions makes it clear that if any particular rule is made under Section 107, any such rule would have the effect notwithstanding anything contrary in any provision contained in Chapter V or in the Rules made thereunder in Section 96.

8. Chapter V of the Rules containing Rule 248 carves out an exception in the case of stage carriage of State Transport undertaking in case of stage carriage plying on temporary permits. It is the contention of the counsel for the respondents that under such proviso, a tentative timing can be fixed without following the procedure laid down in Rule 248(1) and subsequently while issuing permanent permit, such tentative timing is incorporated.

9. In the absence of any specific rules framed under Chapter VI regarding timing, it cannot be said that the provisions contained in Rule 248 are inconsistent with the provisions contained in Chapter VI of the Act or the Rules. Of course there cannot be any doubt that once a scheme is approved under Section 103 of the Act the State Transport undertaking has a right to obtain the permit and there is no discretion left in the authority to refuse any such permit. The absence of discretion to refuse issuance of permit is one thing, the question of considering timing in respect of permit is different. Even where other operators are excluded, in respect of particular stage carriage belong to State Transport undertaking, the timing to be followed is to be indicated in the permit to be granted. It is another matter that where all the stage carriages belong to State Transport Undertaking the question of having a specific timing conference would not arise because the State Transport Undertaking being the holder of all the permits, there is no question of giving opportunity of hearing to anybody else. However, when there is no complete exclusion of private operators on the road, Rule 248 is required to be followed. The exception contemplated under the proviso is only in respect of tentative timings in case of introduction of stage carriages on temporary permit. The very fact that the proviso refers to tentative timings in a temporary permit in favour of State Transport Undertaking itself implies that Rule 248 is also applicable to the permits to be granted in favour of State Undertakings.

10. It is no doubt true that in the form of application contemplated for State Transport undertaking no specific column is provided for timing to be observed, but it is seen that the formal permit to be issued indicates the timing to be maintained.

11. The provisions contained in Section 103(2) are also significant. Section 103(2) empowers the concerned authority to refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending, to cancel any existing permit and modify the terms of any existing permit so as to render the permit ineffective beyond a specified date, reduce the number of vehicles authorised to be used under the permit, curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route. It is significant to note that such provision does not contain any power to

unilaterally change the timings of an existing permit.

12. It is to be noted that almost similar provisions were contained in Chapter IV and Chapter IV-A of the Motor Vehicles Act, 1939. While considering a similar question which had cropped up, Justice S. Mohan, as His Lordship then was, in the decision reported in 1980 MLJ 5 17 (M/s. BALASUBRAMANIAM ROADWAYS (FIRM) AND ANOTHER vs. THE STATE OF TAMIL NADU, REP. BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, FORT ST. GEORGE, MADRAS 9 AND 4 OTHERS) negatived the contention of the State and observed as follows :

 5. Rule 269 of the Tamil Nadu Motor Vehicles Rules contemplates two situations: Under clause (1), the initial fixation of timings to a route conferred upon an existing operator enables him to approach that authority to seek a revision. In the instant case, where the petitioner is already an operator on the route on which the Pandian Roadways Corporation is granted the permit, must certainly be considered to be an aggrieved party if timings are fixed without reference to him. After all, this Court has laid down categorically in Vedachala Mudaliar v. State of Madras that the power to fix the timings is a quasi-judicial function. Where, by reason of those proceedings the operator is likely, to be affected, it is a basic and an elementary principle that he should be put on notice. The respondents cannot take shelter under the argument that rule 269(1) of the Tamil Nadu Motor Vehicles Rules itself does not contemplate issue of notice. That may be so. The Rule need not so state. But when the authority knows fully well by reason of, the objections or otherwise that by the proposed fixation of timings, operators who are operating on the very route, or on a sector of the route are likely to be affected, they will have to be put on notice and their objections heard. This, as I said above, is the barest minimum by adhearing to the principles of natural justice. In this view, I am not impressed with the arguments of the learned Government Pleader that rule 269(2) of the Tamil Nadu Motor Vehicles Rules enables the aggrieved operator to seek a revision of the timings. It has to be remembered in this connection that rule 269(2) of the Rules comes into play after the damage is caused. Law cannot be construed in such an unreasonable way.

13. The observations made in the context of the Motor Vehicles Act, 1939 and the Rules then existing, which were similar in nature, apply with equal force in the present case.

14. Learned counsel appearing for the respondents has submitted that in view of the decision of the Supreme Court reported in 1992 SC 18 88 (RAM KRISHNA VERMA AND ETC.ETC., v. STATE OF U.P. AND OTHERS ETC. ETC.,), the decision of the single Judge no longer holds the field. In 1992 SC 1888 the question was relating to grant of permit in respect of a National Highways route and it was observed that for exclusion of private operators from the route as per the approved scheme, the private operators did not have any right to obtain any permit. The question now raised was not at all raised or not considered in the said decision.

15. Learned counsel appearing for the respondents has also submitted that there is no cause of action at present as the Government had merely issued a circular and it would be always open to the aggrieved party if

a particular decision is taken by STAT or RTA to challenge such decision before the appropriate forum and there is no cause of action to entertain a writ petition at this stage.

16. As a matter of fact, similar contentions had been raised before Justice Mohan and it was observed that such Circular cannot bind the transport authority who are to be guided by the provisions contained in the Act and the Rules.

17. In view of the aforesaid reasons, the writ petitions are disposed of with the observation that the clarification issued by the Government is not binding on the quasi-judicial authority, namely STAT and RTA, who are required to follow the provisions contained in Rule 248 even while issuing permanent permit to the State Transport Undertaking as per Section 103 of the Act in respect of route where there is no complete exclusion of private operators. Consequently, the connected Miscellaneous Petitions are closed.

06-03-2004

Index : Yes
Internet : Yes

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To

1. The Transport Commissioner, Ezhilagam, Chepauk, Chennai 5.

2. Secretary, Regional Transport Authority, Gobichettipalayam, Erode District.

3. Tamil Nadu State Transport Corporation, (Coimbatore Divn.II)Ltd., rep. by its Managing Director, Chennimalai Road, Erode.

4. The Secretary to the Government, Transport (A) Department, Secretariat,